

JUDGE FRANKLIN D. BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KYLE DAVIE GRAHAM,

Defendant.

NO. CR04-5172FDB

DEFENDANT'S SENTENCING
MEMORANDUM

I. INTRODUCTION

Kyle Graham is before the court on November 5, 2004, for sentencing on his guilty plea to the charge of illegal possession of a firearm in violation of 18 U.S.C. section 922(g)(1). The maximum sentence is 10 years in prison and a \$250,000.00 fine. Mr. Graham has spent 235 days in custody on this matter, since his arrest on March 15, 2004.

II. GUIDELINES CALCULATION

Defendant's position is that Mr. Graham should receive a three level reduction of his offense level for acceptance of responsibility, which would result in offense level is 17, rather than 20 as the U.S. Probation Department asserts.

1 Defendant agrees that his criminal history category is VI. These calculations
2 would yield a guideline range of 51 -63 months.

3 Notwithstanding the otherwise applicable guideline range, the government and
4 defendant have agreed pursuant to the plea agreement in this case that the appropriate
5 sentence for Mr. Graham is 40 months.

6 III. DISCUSSION

7 As is plain from the pre-sentence report, Kyle Graham has had difficulties in his
8 life ever since his father passed away suddenly when he was 12 years old. As the PSR
9 indicates, he remembers a “normal” childhood and family life until his father died. After
10 that, he remembers “hating the world” and started rebelling and “acting out”. When he
11 was a young teenager his mother sent him to live with an uncle, who abused Kyle and
12 introduced him to illegal drugs. Not surprisingly, having suddenly lost his father,
13 having his family life disrupted, having no appropriate father figure, and having
14 unresolved grief issues, he turned to a negative peer group and alcohol and drug use to
15 as “replacements” for home and family. Also not surprisingly, he has had problems with
16 drug abuse and anger since that time.

17 Mr. Graham has worked for a living since his high school years. He has skills in
18 carpentry and cabinetmaking and has laid carpets and worked in retail sales. However,
19 not surprisingly, his drug abuse problems and unstable living and family situation have
20 always caused him problems in maintaining stable employment. He has also suffered
21 from depression “on and off” since his father died, and has never had any kind of
22 treatment or counseling to deal with his unresolved emotional conflicts. Although Kyle
23 may not fully understand this, he has likely used drugs in an attempt to “self-medicate”
24 his feelings of hopelessness and despair. As his mother told the probation officer, when
25 he has been released from prison in the past, he has lacked the resources to “get his life

1 together” and has therefore ended up back in trouble. She feels that, despite his
2 problems, he “has a good heart.” Hopefully, he will be able to find employment and a
3 stable residence and maintain sobriety and abstinence from drug abuse upon his release
4 from this term of imprisonment. Drug treatment and mental health counseling should be
5 helpful toward this end.

6 Counsel and the government acknowledge that the plea agreement in this case
7 calls for a sentence below the guideline range. However, the plea agreement was
8 carefully negotiated with the acknowledgment by both sides that certain problems
9 existed for purposes of the prosecution of this case and that a negotiated resolution was
10 preferable from the perspective of both parties. The agreed recommendation of 40
11 months was seen as close to (within one year of) the low end of the guideline range and
12 therefore sufficient punishment for this particular offense.

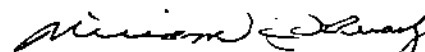
13 The recommended 3 year term of supervised release with conditions of mental
14 health and drug treatment should help to assist Mr. Graham in dealing with mental health
15 issues and avoiding drug use, thereby minimizing the likelihood of reoffense.

16 IV. CONCLUSION

17 Therefore, based on the foregoing reasoning and the information provided in the
18 pre-sentence report, the defense respectfully urges that the court adopt the joint
19 recommendation of the government and defense and sentence Mr. Graham to 40 months
20 in custody and three years supervised release.

21 DATED this 1ST day of November, 2004.

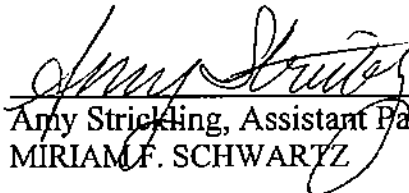
22 Respectfully submitted,

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24 
25 MIRIAM SCHWARTZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below I electronically filed with the Clerk of the Court the foregoing Defendant's Sentencing Memorandum. I used the CM/ECF system, which will send notification of this filing to Assistant United States Attorney Tessa Gorman. I hereby also certify that I have served the probation officer of record with a copy of the foregoing via telefax.

DATED this 1 day of ^{Nov.}~~October~~, 2004.


Amy Strickling, Assistant Paralegal to
MIRIAM F. SCHWARTZ

YOUR HONOR, I regret the circumstance I am writing this letter under. Everyday that goes by I think about how things should have been different. its a shame things have had to come to this for me to see the way in my ways. You see I have had a rough time growing up, and I turned to drugs to alter reality in my life. I have got in some trouble that I am in no way proud of, if I could change this I would but we cant change the past. I look forward to a better future. I have made a conscious decision between myself and Jesus Christ to change my ways. I want nothing more ~~in this world~~ in this world than to be reunited with my family. My 5 year old son the only thing good I have in this world does not deserve this. I ~~was~~ just want a chance to take what the devil intended for bad and turn it into something good. I am asking for understanding. we all have problems. I know ~~with~~ given the opportunity I can be a positive contribution in society. I'm asking your honor please give me the opportunity, I will not let you down.

Sincerely,
 John L. L...